IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

**J U D G M E N T**

(1) S. B. CIVIL MISCELLANEOUS APPEAL NO.360/95
(Ratan Lal & Others v. R.S.R.T.C. & Another)

(2) S. B. CIVIL MISCELLANEOUS APPEAL NO.362/95
(Smt. Kailash Devi v. R.S.R.T.C. & Another)

Under Section 173 of the Motor Vehicles Act, 1988, against the Order dated 29.5.95 passed by Shri O.P.Bishnoi, RHJS, Judge, Motor Accident Claims Tribunal, Dungarpur, in MACT Case Nos.5/90 & 6/90.

DATE OF JUDGMENT :::: 08-10-2007

**P R E S E N T**

**HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI**

Mr.J.Gehlot, for Appellant (s).
Mr.Anil Bachhawat, for Respondent (s).

**BY THE COURT:-**

Aggrieved by the judgment of the Motor Accident Claims Tribunal, Dungarpur in MACT Case Nos. 5/90 and 6/90, these two appeals have been preferred Both the claim cases were decided by the learned Tribunal by its common judgment dated

29-05-1995, thus two appeals arising out of common judgment were heard together and decided by the common judgment since they are arising out of same accident.

Claimant – Smt. Kailash Devi preferred Claim Case No.6/90, stating herself to be the registered owner of Tractor No. RJE 9246, whereas another claim petition was preferred by Ratan Lal, Smt. Chandi and Chhitar, claiming themselves to be the joint owners of Tractor No. RSE 7181. Both the claimans appellants stated that both the tractors were used to undertake work assigned by Rural Development Agency, Dungarpur. On 30-05-1989, both the tractors were parked near Dak Bungalow and at about 9.30 P.M., Bus No. RRG 1480 caused damage to both the tractor by rash and negligent driving of the Driver. The bus was driven at a very high speed, hence it first dashed Tractor No. RJE 9246, as a consequence of which the other Tractor No. RSE 7181 also hit, though it was standing 15 ft. away from the tractor No.9240. Both the tractors remain idle for 20 days for its repairs, causing loss of Rs.20,000/-, apart from loss of salary of Rs.5,000/- for the staff. A sum of Rs.5,000/- was further incurred to bring those tractors from Dungarpur to Bhilwara, where a sum of Rs.72,000/- had to be incurred on Tractor No. RJE 9246 and Rs.50,000 on Tractor No. RSE 7181, apart from loss of value of each tractor by Rs.50,000/-.

In reply to the statement of claim, non-appellants had not accepted the story given by the claimants and submitted that the Tractor No. 7181 was not standing, but due to wrongful driving of tractor driver, it met with an accident.

The learned Tribunal recorded evidence of both the parties and framed three issues for its decision. After careful consideration of the material available on record, the Tribunal came to the conclusion that claimants could not prove their ownership of the tractor, apart from the submission of proof of expenses towards repair of the tractor. Thus, claim petition of the claimant was dismissed, hence this appeal.

Learned counsel for the appellants urged that the finding of the Tribunal holding that the claimants – appellants could not prove their title over the tractors in question, is based on perverse finding. It was argued that the proof was submitted to show ownership of the tractors. A copy of the registration was also submitted to show that the tractor was registered in the name of claimant – appellants, yet ignoring the material available on record, the Tribunal recorded finding against the claimants. The other argument was pertaining to denial of claim, despite of submission of sufficient proof regarding loss sustained

due to damage of the tractors. Thus, ignoring the bills submitted showing total amount spent for repair, the claim was denied. It was, thus, prayed that the finding of the Tribunal calls for interference of this Court and thereby claim of the appellants be allowed as indicated in the claim petition.

Per contra, learned counsel for the non-appellants submitted that the finding recorded by the Tribunal is based on the material available on record. It was submitted that claimant could not show ownership of the tractors involved in the present matter, therefore, after considering the material available on record, the Tribunal rightly came to the conclusion that the title and ownership of the tractor could not be proved by the claimants. It was further urged that the claimants appellants could not even give proof of loss and damage of the tractor out of the accident. It was given out that the bills submitted as Exs. P-9 to P-15 were found to be doubtful as not only those documents were submitted after a great delay, but out of many Exhibits, Exs. 10 and 12 were found to have over-writing bearing material effect on the claim of the claimants. It was thus, prayed that the finding of the Tribunal having no perversity, needs to be affirmed.

I have heard rival submissions of both the learned counsel for the parties and perused the record carefully. From the document (Ex.P-21) on record, it has come out that Tractor No. 9246 got registered in the name of Smt.Kailash Devi on 22.04.1983. However, document further shows that one line was added to show that said registration remained till 12.03.1992. The perusal of the original document shows that the last line was added in a different ink, thus the document becomes suspicious, more so, when the endorsement of the District Transport Officer only shows the date of first registration of tractor in the name of Kialash Devi, i.e., 22.04.1983, but if last line of the endorsement is taken out, then said document does not show that on the date of the accident, i.e., 30.05.1989, the said registration was standing in the name of Kialsh Devi. Thus, it becomes clear that the last line was added in a doubtful manner, more so, on minute examination of the document reveals different handwriting of word "Panjikrit" written in the second last line and last line of the endorsement of the D.T.O. A doubtful last line is written by different person as word "Panjikrit" shown therein is written differently apart from other words. Thus, not only for the reasons recorded by the Tribunal, but further examination of the document makes it clear that Ex.P-21 does not prove registration of the tractor in the name of Kialash Devi on the date of accident for Tractor No. 9246. Therefore, finding

recorded by the Tribunal needs no interference. So far as other tractor bearing No.7181 is concerned, no witness was produced to prove its registration in the joint name of three persons, though on record, a letter of endorsement of DTO exists, but the same was not proved in evidence, thus cannot be relied and otherwise, the document is also having the same manipulation as exists in Ex.P-21. In these circumstances, even ownership of the second tractor could not be proved by the claimant – appellants, therefore, finding recorded by the Tribunal cannot be said to be perverse even regarding Tractor No.7181. In fact, claim petition of the claimant could have been dismissed on this ground alone. However, the Tribunal had further discussed as to whether claimant - appellants are entitled for any compensation.

The second argument of the learned counsel for the appellants pertains to the admissibility of the compensation as sufficient material was produced to prove their claim, but same was discarded by the Tribunal. I have perused the documents Exs. P-9 to P-15, submitted by the claimants and perusal of those documents shows that out of many documents, two documents, i.e., Ex.P-10 and Ex.P-12 are having over-writing on the date, having material effect and for other documents, claimants could not give any explanation as to why those

documents could not produce at the earliest. However, if I ignore the delay part, then also, perusal of documents shows that same are not reliable. Ex.P-10 contains about Oil Filter, Diesel Filter, Gear Oil etc, whereas other bill Ex.P-14 makes mention about front excel, Ex.P-15 makes mention about back excel etc. , whereas if the claim petition is looked into, it only makes a mention about the damage of tire and radiator & damage to the compressor, but contrary to the pleadings, documents have been submitted to claim compensation in a doubtful manner. Even bills raised for tire shows that the bill does not contain even number of the tractor, documents were not proved by producing the author of the documents. Hence finding recorded by the learned Tribunal to discard the documents from its consideration cannot be said to be based on perverse finding. Thus, even second argument raised by the learned counsel for the appellants has not attracted me to call for interference with the judgment of the learned Tribunal, rather it is once held that the claimants could not prove their ownership of the tractors in question, then claim of damages of those tractors cannot be made admissible even otherwise.

In view of these facts and circumstances, I am not inclined to accept the appeals preferred by the claimants. Thus, both the appeals fail and the same are dismissed accordingly. The

judgment of the learned Tribunal is affirmed. Parties to bear their own costs.

**(MUNISHWAR NATH BHANDARI), J.**

scd.